

CITY-COUNTY GENERAL ORDINANCE NO. 92, 2005  
Proposal No. 397, 2005

METROPOLITAN DEVELOPMENT COMMISSION  
DOCKET NO. 05-AO-03

A GENERAL ORDINANCE to amend portions of the "Revised Code of the Consolidated City and County regarding the Flood Control Zoning Ordinance and fixing a time when the same shall take effect.

WHEREAS, IC 36-7-4 establishes the Metropolitan Development Commission (MDC) of Marion County, Indiana, as the single planning and zoning authority for Marion County, Indiana, and empowers the MDC to approve and recommend to the City-County Council of the City of Indianapolis and of Marion County, Indiana ordinances for the zoning or districting of all lands within the county for the purposes of securing adequate light, air, convenience of access, and safety from fire, flood, and other danger; lessening or avoiding congestion in public ways; promoting the public health, safety, comfort, morals, convenience, and general public welfare; securing the conservation of property values; and securing responsible development and growth; now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE  
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Flood Control District Zoning Ordinance of Marion County, Indiana, Section 735, Article III, of the Revised Code of the Consolidated City and County, (adopted under Metropolitan Development Commission Docket Numbers 70-AO-4, as amended), as amended, pursuant to IC 36-7-4, be further amended by the deletion of the language that is stricken-through and by the addition of the language which is underscored, to read as follows:

Sec. 735-300. Establishment of official zoning map; establishment of secondary flood control districts.

(a) Establishment of the official zoning map.

- (1) The county is divided into zoning districts, as shown on the official zoning map, which together with all explanatory matter thereon, is adopted by reference and declared to be a part of all zoning ordinances for Marion County, Indiana.
- (2) The official zoning map shall be maintained in electronic form, and depicted in various formats and scales as appropriate to the need. The director of the department of metropolitan development shall be the custodian of the official zoning map.
- (3) When changes are made in zoning district boundaries, such changes shall be made on the official zoning map promptly after the amendment has been adopted in accordance with IC 36-7-4-600 Series.
- (4) No changes shall be made to the official zoning map except in conformity with the requirements and procedures set forth in the zoning ordinance and state law.

(b) Establishment of flood control districts. The following secondary flood control districts for Marion County, Indiana, are hereby classified, divided and zoned into such districts as designated on the official zoning map:

Flood Control Zoning Districts  
Floodway (secondary)  
Floodway Fringe (secondary)

Zoning District Symbols  
FW  
FF

(c) The district boundaries have been established from hydrological data delineated on flood insurance rate maps provided by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Marion County, Indiana, and Incorporated Areas," dated ~~January 5, 2001~~ July 5, 2005 (and as subsequently amended). Topographic-based floodplain maps which may be developed by the city and approved for use by FEMA may be used as best available data to supplement FEMA's flood insurance rate maps, in accordance with FEMA and IDNR procedures and regulations. These maps contain zone AE floodplain areas for which floodway district boundaries and

base flood elevations are provided, zone AH floodplain areas for which base flood elevations are provided, zone AO floodplain areas for which base flood elevations are not provided, and zone A floodplain areas for which floodway district boundaries and base flood elevations are not provided. Each of the aforementioned maps also contain shaded zone X floodplain areas which depict areas subject to flooding in the headwaters of a stream, the five hundred-year frequency floodplain collar outside of the one-hundred-year frequency zone AE area, and land subject to shallow flood depths of less than one (1) foot. The district boundaries and base flood elevations for mapped areas shall be determined as follows:

- (1) Zone AE: The floodway fringe (FF) zone district boundary is determined by applying the base flood elevations from the flood insurance study base profiles to the specific topography of a site/parcel/property. The floodway (FW) district boundary is determined from the flood insurance rate map. The base flood elevation shall be determined from the flood insurance study base flood profile, and is rounded up to the nearest one-half ( 1/2 ) foot elevation.
- (2) Zone AH and zone AO: In zone AH floodplain areas, the base flood elevation shown on the flood insurance rate map shall be used. In zone AO areas, the base flood elevation shall be determined by adding the depth number specified in feet on the flood insurance rate map (two (2) feet, if no depth number is specified) to the highest ground elevation at the site.
- (3) Zone A: Because this mapped area depicts only the approximate base flood boundary, the floodway (FW) district boundary, floodway fringe (FF) district boundary, and base flood elevation must be established through a site-specific engineering analysis using a method acceptable to DMD or a floodplain recommendation letter issued by IDNR containing specific reference to the site in question. It is the responsibility of the applicant applying for a floodplain development permit to provide the requisite engineering analysis to DMD or to obtain a floodplain recommendation letter from IDNR.
- (4) Zone X: Zone X areas (shaded or unshaded) are not designated by FEMA as special flood hazard areas and are not regulated by this article.

(d) Detailed hydrological data may not be available on the aforementioned maps for certain portions of the floodway and floodway fringe districts. In such cases, an owner of land or applicant for a floodplain development permit shall be required to request a determination of district boundaries and appropriate flood protection grade from the IDNR and the appropriate district regulations shall apply. In the event IDNR lacks sufficient data, DMD shall determine which type of flood control district the site is located in and the appropriate flood protection grade and limitations applicable to that district. If DMD lacks sufficient data to make this determination, the applicant for the floodplain development permit shall be required to submit a zoning district boundary determination completed by a registered professional engineer. The procedures by which specific determinations of district boundaries are to be made and incorporated into revisions of the flood insurance rate maps are set forth in section 735-301 of this article.

#### **Sec. 735-301. Changes to district boundaries.**

(a) Procedures to change the floodway and floodway fringe district boundaries, with or without an accompanying base flood elevation change, may be initiated in certain circumstances, including but not limited to: Determination of original mapping error; physical change to the landscape such as filling, excavating or grading; modification of a channel or bridge which changes the hydraulic or hydrologic characteristics of the watercourse; availability of better topographic base mapping which more accurately depicts the floodplain limits; and development of detailed hydrological data for previously unstudied zone A areas. In addition, an owner or lessee of property who believes his or her property has been wrongly designated in a particular flood control zoning district may apply for a district boundary change in accordance with this section.

(b) Changes to the floodway (FW) district boundary, floodway fringe (FF) district boundary, and the accompanying base flood elevations must be approved by FEMA through a letter of map revision (LOMR) or letter of map amendment (LOMA) in accordance with procedures established by FEMA, before the revised maps and data shall be used under this article. Detailed study data, developed for sites located in zone A areas pursuant to section 735-300 as best available data, will generally not be acknowledged by

FEMA for flood insurance determinations or result in district boundary revisions unless an official LOMR or LOMA is issued by FEMA which specifies such changes.

(c) DMD shall review all LOMR and LOMA applications for completeness pursuant to FEMA regulations and procedures and verify that the subject project has satisfied the regulatory requirements of this article. Upon verification, DMD shall issue a signed community acknowledgement to the applicant as required by FEMA. If the LOMR or LOMA application is based on a channel improvement or other physical change to the floodplain which requires continual operation and maintenance as a condition of the issuance of the LOMR or LOMA by FEMA, DMD may require the applicant to enter into an agreement with DMD to provide such operation and maintenance.

(d) Any changes in the floodway district boundary must be reported to FEMA by the applicant within six (6) months of construction with a copy forwarded to DMD. DMD shall be responsible for maintaining up-to-date floodplain maps including any amending LOMRs and LOMAs and shall coordinate efforts with IDNR, FEMA and applicants to solve mapping conflicts using the best available hydrologic, hydraulic and topographic data.

(e) By reference the Metropolitan Development Commission and the city-county council must acknowledge all floodway (FW) and floodway fringe (FF) district boundary relocations and base flood elevation revisions approved by FEMA through the issuance of LOMR and LOMAs as changes to the official zoning map.

(f) All letters of map amendment (LOMA) and letters of map revisions (LOMR) approved and issued by the Federal Emergency Management Agency (FEMA) from September 2, 1992 until ~~January 5, 2001~~ July 5, 2005 shall be incorporated as map amendments to the applicable flood control districts boundaries (said letters [LOMA and LOMR] are incorporated by reference and made a part of this article).

#### **Sec. 735-302. General regulations applicable to all districts.**

The following regulations shall apply to all land within any flood control district:

- (1) From and after October 4, 1971:
  - a. No land, watercourse, building, structure, premises or part thereof shall be used or occupied except in conformity with these regulations and for uses permitted by this article.
  - b. No land, watercourse, building, structure, premises, use or part thereof shall be constructed, erected, converted, enlarged, extended, reconstructed, relocated, altered, improved, or repaired except in conformity with these regulations and for uses permitted by this article.
- (2) No land alteration, watercourse alteration, open land use, legally established nonconforming use, or structure as defined in this article shall be constructed, erected, placed, converted, enlarged, extended, reconstructed, improved, repaired, restored, or relocated until a floodplain development permit is issued for the proposed activity as required by this article.
- (3) Application for a floodplain development permit shall be made on a form provided by DMD. The application shall be accompanied by drawings of the site drawn to scale which depict the proposed activity in a manner adequate for DMD to determine compliance with this article. At a minimum, the site plan shall show: All existing and proposed structures; existing and proposed contours (if the proposed activity includes land alteration or watercourse alteration), the governing base flood elevation for the site (including the source of the base flood elevation value); and the proposed flood protection grade elevation (if the proposed activity requires a specified flood protection grade under this article).

Site plans for all platted subdivisions shall also include a delineation of the existing and proposed floodway and floodway fringe boundaries; a flood protection grade denoted for each building pad; and, for each lot located in a flood control district, a plan note identifying the flood control district in which it is located and the requirements and limitations imposed under this article for construction on the floodplain lot.

Plans for proposed activities requiring a specified flood protection grade under this article, which involve land or watercourse alterations, or involve floodproofing of a structure, shall be certified by a professional engineer, professional surveyor, or professional architect as defined by this article.

- (4) An application fee shall be charged for the processing of a floodplain development permit application. A fee schedule shall be developed by DMD for categories of proposed activities sufficient to recover the cost of processing applications.
- (5) A floodplain development permit shall not be issued for any proposed activity until all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334.
- (6) DMD shall require that an NFIP elevation certificate be completed by a professional engineer, professional architect or professional surveyor for each new structure, substantial addition, substantial improvement, or restoration of substantial damage located in a flood control district, as required by FEMA. DMD shall supply each applicant for a floodplain development permit with a blank NFIP elevation certificate during the DMD's floodplain development permit review process. The applicant shall have a professional engineer, professional architect or professional surveyor complete the NFIP elevation certificate, showing the as-built flood protection grade and lowest adjacent grade to the structure, and other information required in the form. The applicant shall deliver a signed and completed NFIP elevation certificate to DMD within ten (10) calendar days after completion of construction of the lowest floor grade, and before DMD completes the final site inspection.

DMD shall require that a floodproofing certificate, if required by section 735-302(2)a be completed by a professional engineer or professional architect for each new structure, substantial addition, substantial improvement or restoration of substantial damage located in a flood control district, as required by FEMA. DMD shall supply each applicant for a floodplain development permit with a blank floodproofing certificate during the DMD's floodplain development permit review process. The applicant shall have a professional engineer or architect complete the floodproofing certificate showing the as-built flood protection grade as provided by the floodproofing measures constructed, and other required information on the form. The applicant shall deliver a signed and completed floodproofing certificate to DMD within ten (10) calendar days after completion of construction of the structural floodproofing and before DMD completes the final site inspection.

DMD shall not perform the final inspection of construction involving a new building or addition to a building requiring an elevation certificate or floodproofing certificate until it has received notification that a properly completed elevation certificate or floodproofing certificate has been submitted to DMD. Failure to submit a properly completed elevation certificate, or floodproofing certificate if applicable, shall result in the issuance of a stop work order on the project by DMD, revocation of the floodplain development permit by DMD, or both.

- (7) DMD shall make all determinations and obtain all data in accordance with FEMA standards at 44 CFR 60.3. The permit applicant is responsible for supplying data to DMD that is required by FEMA.
- (8) The Metropolitan Development Commission hereby delegates authority to DMD to perform all functions relating to the review of applications for issuance of floodplain development permits, in accordance with this article.
- (9) All new construction and substantial improvements shall:
  - a. Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

- b. Be constructed with materials resistant to flood damage;
  - c. Be constructed by methods and practices that minimize flood damages; and
  - d. Be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (10) A floodplain development permit shall not be issued for proposed activity in zone A or zone AH or zone AO until the floodway and floodway fringe district boundaries and base flood elevation are established in accordance with section 735-300(b).
- (11) The approval of a floodplain development plan by the permit division under this section shall be valid for a period of one (1) year from the date such approval was granted, or until the floodplain development permit for which the plan was submitted was issued, whichever occurs first. However, prior to the issuance of the permit, if there are any material changes to an approved floodplain development plan or circumstances which cause the floodplain development plan to be inaccurate or incomplete, then a new or corrected floodplain development plan shall be submitted to the department as a precondition for obtaining a floodplain development permit.
- (12)
- a. A floodplain development permit may be transferred with the approval of the division of compliance to a person, partnership or corporation which would be eligible to obtain such floodplain development permit in the first instance (hereinafter called "transferee"), after both the payment of a fee specified in the rules and procedures of the Metropolitan Development Commission and the execution and filing of a form furnished by the division of compliance. Such transfer form shall contain, in substance, the following certifications, release and agreement:
    - 1. The person who obtained the original floodplain development permit or a person who is employed by and authorized to act for the obtainer (hereinafter called "transferor") shall:
      - i. Certify under penalties for perjury that such person is familiar with construction activity accomplished pursuant to the floodplain development permit; such person is familiar with the floodplain development standards and procedures applicable to the construction activity; and to the best of such person's knowledge, information and belief the construction activity, to the extent performed, is in conformity with all floodplain development standards and procedures; and,
      - ii. Sign a statement releasing all rights and privileges secured under the floodplain development permit to the transferee.
    - 2. The transferee shall:
      - i. Certify that the transferee is familiar with the information contained in the original floodplain development permit application, the detailed plans and specifications, the plot plan and any other documents filed in support of the application for the original floodplain development permit;
      - ii. Certify that the transferee is familiar with the present condition of the premises on which construction activity is to be accomplished pursuant to the floodplain development permit; and,
      - iii. Agree to adopt and be bound by the information contained in the original application for the floodplain development permit, the detailed plans and specifications, the plot plan and other documents supporting the original floodplain development permit application; or in the alternative, agree to be bound by such application plans and documents modified by plan amendments submitted to the division of compliance for approval.

b. The transferee shall assume the responsibilities and obligations of and shall comply with the same procedures required of the transferor and shall be subject to any written orders issued by DMD.

c. A permit or design approval may not be transferred from the specified location to another location.

(13) Expiration of floodplain development permits by operation of law.

- a. If construction activity, other than activity involving the removal of all or part of a structure, has not been commenced within one hundred eighty (180) days from the date of issuance of the floodplain development permit, the permit shall expire by operation of law and shall no longer be of any force or effect; provided, however, DMD may, for good cause shown in writing, extend the validity of any such permit for an additional period which is reasonable under the circumstances, but in no event shall the continuance exceed a period of sixty (60) days. Such extension shall be confirmed in writing.
- b. If the construction activity has been commenced but only partially completed, and thereafter substantially no construction activity occurs on the construction site over a period of one hundred eighty (180) days, the permit shall expire by operation of law and no longer be of any force or effect; provided, however, DMD may, for good cause shown in writing, extend the validity of any such permit for an additional period which is reasonable under the circumstances to allow of construction activity.

**Sec. 735-303. FW Floodway District regulations (secondary).**

The following regulations, in addition to those in section 735-302, shall apply to all land within the floodway district. These regulations shall be in addition to all other primary and secondary zoning district regulations applicable to such land, and in case of conflict, the more restrictive regulations shall apply. The purpose of the floodway district is to guide development in areas identified as a floodway. IDNR, under the authority of the INRC, exercises primary jurisdiction in the floodway district under the authority of IC 14-28-1; however, the city may impose terms and conditions on any floodplain development permit it issues in a floodway district which are more restrictive than those imposed by IDNR regulations.

(a) Permitted uses. The following uses shall be permitted in the floodway district subject to the development standards of section 735-303(b):

- (1) Open land uses.
- (2) Land alterations and watercourse alterations.
- (3) Nonbuilding structures.
- (4) Detached residential accessory structures.
- (5) Improvements, additions, and restoration of damage to legally established nonconforming uses.

(b) Development standards.

- (1) Open land use. An open land use as defined in this article shall be allowed without a floodplain development permit provided that the open land use does not constitute or involve any structure, obstruction, deposit, construction, excavation, or filling in a floodway in accordance with IDNR regulations. Otherwise, proposed open land uses shall require a floodplain development permit in accordance with this subsection.
- (2) Land and watercourse alterations. Land alterations and watercourse alterations as defined in this article shall not result in any new or additional public or private expense for flood protection; shall assure that the flood carrying capacity is maintained and shall not increase flood elevations, velocities, or erosion upstream, downstream or across the stream from the proposed site; and shall not result in unreasonable degradation of water quality or the floodplain environment.

In addition, no floodplain development permit shall be issued for land alterations or watercourse alterations in a floodway unless a certificate of approval for construction in a floodway is first issued by IDNR for the proposed activity, if required pursuant to IC 14-28-1.

(3) Nonbuilding structures. Nonbuilding structures as defined in this article shall be permitted in a floodway only under the following conditions:

- a. The nonbuilding structure is designed, located, and constructed such that it is protected from potential damage resulting from flooding up to and including the base flood;
- b. The nonbuilding structure is designed to resist displacement resulting from hydrostatic, hydrodynamic, buoyant, or debris loading forces associated with flooding up to and including the base flood;
- c. The nonbuilding structure is designed to minimize potential contamination or infiltration of floodwaters or other potential environmental health or safety hazards associated with flooding up to and including the base flood;
- d. The nonbuilding structure is designed to minimize the obstruction of floodwaters by such measures as providing flow-through rather than solid fencing, reduction of structure cross-section area perpendicular to the flow path, and placement of the nonbuilding structure away from areas of greater depth or velocities;
- e. The IDNR has first issued a certificate of approval of construction in a floodway, if applicable pursuant of IC 14-28-1; and
- f. The nonbuilding structure must meet the applicable flood protection grade required by IDNR and FEMA rules.

(4) Detached residential accessory structures, the total square footage being equal to or less than four hundred (400) square feet, may be erected in a floodway with or without a flood protection grade two (2) feet above the base flood elevation only if the following conditions are met.

- a. The detached structure is constructed or placed on the same lot as an existing primary residential structure and is operated and maintained under the same ownership;
- b. The detached structure is customarily incidental, accessory and subordinate to, and commonly associated with, the operation of the primary use of the lot;
- c. The detached structure is no larger than seventy-five (75) percent of the size of the existing primary residential structure;
- d. The detached structure shall never be used in total, or in part, for habitable space;
- e. Any electrical wiring and any heating, cooling or other major appliance in the detached structure is located above the base flood elevation and the detached structure is not used for the storage of any substance or chemical which is dangerous or would become dangerous if mixed with water;
- f. The IDNR has first issued a certificate of approval of construction in a floodway; and
- g. As a condition to allowing construction of a detached residential accessory structure, DMD may first require the owner to record a statement, in a form approved by DMD, indicating that the detached residential accessory structure shall not, in the future, be used in total, or in part, as habitable space. This shall be a covenant that shall be recorded in the office of the Recorder, Marion County, Indiana, with the property deed and shall be binding on all subsequent owners.

(5) Legally established nonconforming uses in a floodway (FW) district. Nothing stated in this subsection shall prevent ordinary maintenance or repair of legally established nonconforming uses as defined in this article. The cost of ordinary maintenance and repair of building or structures is not counted toward the fifty (50) percent limit for determining substantial improvement, restoration of substantial damage or substantial addition as defined herein.

a. Restoration of damage.

1. Nonsubstantial damage: A legally established nonconforming use which has been damaged by flood, fire, explosion, act of God, or the public enemy, may be restored to its original dimension and condition provided that the damage is nonsubstantial damage as



defined in this article and a certificate of approval of construction in a floodway, if required in accordance with IDNR rules, is first obtained from IDNR.

2. Substantial damage: A legally established nonconforming use which is substantially damaged as defined in this article may only be restored if the following conditions are satisfied:
  - i. The legally established nonconforming use is not a primary residential structure;
  - ii. If required, the applicant for the proposed restored use must first obtain a certificate of approval for construction in a floodway from IDNR;
  - iii. A restored structure must be provided with a flood protection grade at or above the base flood elevation;
  - iv. The design of the foundation of a restored structure must be certified by a professional engineer or professional architect registered in the state of Indiana as being adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood, and constructed with a material that will maintain its structural integrity during and after exposure to floodwaters;
  - v. If the damage to a structure is such that the structure including the foundation is destroyed, the structure must be rebuilt upon the same area of the original foundation and have substantially the same configuration as the destroyed structure, unless the rebuilt structure is proposed to be placed on a site less vulnerable to flood hazards as determined by DMD;
  - vi. The restored or rebuilt structure does not restrict or obstruct the floodway more than the damaged structure; and
  - vii. The damage was not intentionally caused by the owner or occupant;
  - viii. The restoration of the structure is begun within one (1) year and completed within two (2) years following the date that the damage occurred.

b. Improvements.

1. Nonsubstantial improvements: A legally established nonconforming use in a floodway (FW) district may undergo a one-time only nonsubstantial improvement. Subsequent improvements shall be subject to the requirements and limitations of this article applicable to substantial improvements.
2. Substantial improvements: A substantial improvement to a legally established nonconforming use in a floodway (FW) district is prohibited.

c. Additions.

1. Nonsubstantial additions: A legally established nonconforming use in a floodway (FW) district may undergo a one-time only nonsubstantial addition provided that:
  - i. The applicant has provided development plans and any other supporting data, as required by DMD, certifying that the proposed addition will not cause any increase in the base flood elevation; and
  - ii. A covenant indicating that "a one-time non-substantial addition to the structure has taken place and that no further additions will be allowed" shall be recorded in the office of the recorder, Marion County, Indiana, with the property deed and shall be binding on all subsequent owners.  
Subsequent additions shall be subject to the requirements and limitations of this article applicable to substantial additions.
2. Substantial addition: A substantial addition to a legally established nonconforming use in a floodway (FW) district is prohibited.



- (6) Prohibition of garbage, trash, junk in floodway (FW) district. No use shall involve the storage, accumulation, spreading, dismantling or processing of garbage, trash, junk, or any other similar discarded or waste material.

**Sec. 735-304. Floodway Fringe (FF) District regulations (secondary).**

The following regulations, in addition to those in section 735-302, shall apply to all land within the floodway fringe district. These regulations shall be in addition to all other primary and secondary zoning district regulations applicable to such land, and in case of conflict, the more restrictive regulations shall apply.

The purpose of the floodway fringe district is to guide development in areas subject to potential flood damage, but outside a floodway district.

(a) Permitted uses. All uses permitted in the applicable primary zoning district shall be permitted in the floodway fringe district, subject to the requirements of this section.

(b) Development standards.

- (1) General. Except as provided in this subsection and subsections (2), (3), (5), (6) and (8) below, no building shall be erected, reconstructed, expanded, structurally altered, converted, used, relocated, restored, or improved unless it is provided with a flood protection grade of at least two (2) feet above the base flood elevation. This flood protection grade may be achieved for nonresidential structures by structural floodproofing. The design and construction shall be certified on a floodproofing certificate by a professional engineer or professional architect registered in the state of Indiana as being adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood.

For floodplain development at sites which are elevated with fill, lowest floor levels, including basement floors, shall be provided with a flood protection grade of at least two (2) feet above the base flood elevation. Non-living spaces, such as crawl spaces that are below grade on all sides, shall be provided with a lowest floor level at least equal to the base flood elevation. The flood protection grade as well as all other requirements of this article shall not be applicable to property which has been removed from a flood control district through the issuance of a final LOMR or LOMA by FEMA.

Floodway fringe fill on which a building is to be placed shall be compacted to ninety-five (95) percent of maximum density using the Standard Proctor Test method. The surface of the fill shall extend at least ten (10) feet horizontally from the perimeter of the building before sloping below the base flood elevation. This is a minimum distance which may need to be increased by the designer based on-site conditions. Fill slopes shall be adequately protected from erosion using a method approved by DMD.

- (2) Open land use. Any open land use as defined in this article shall be allowed in a floodway fringe district without a floodplain development permit.
- (3) Land and watercourse alterations. Land alterations and watercourse alterations in a floodway fringe district shall not result in any new or additional public or private expense for flood protection; shall not increase flood elevations or reduce flood carrying capacity; shall not increase velocities or erosion upstream, downstream, or across the stream from the proposed site; and shall not result in unreasonable degradation of water quality or the floodplain environment.
- (4) Nonbuilding structures. Nonbuilding structures as defined in this article shall be allowed in a floodway fringe district only if constructed in a manner that will not impede the flow of floodwater and debris carried by floodwater, and the following conditions are met:
- a. The nonbuilding structure is designed, located and constructed such that it is protected from potential damage resulting from flooding up to and including the base flood;

- b. The nonbuilding structure is designed to resist displacement resulting from hydrostatic, hydrodynamic, buoyant, or debris loading forces associated with flooding up to and including the base flood;
  - c. The nonbuilding structure is designed to minimize potential contamination or infiltration of floodwaters or other potential environmental or safety hazards associated with flooding up to and including the base flood;
  - d. The nonbuilding structure is designed to minimize the obstruction of floodwaters by such measures as providing flow-through rather than solid fencing, reduction of structure cross-section perpendicular to the flow path, and placement of the nonbuilding structure away from areas of greater depth or velocities.
  - e. The nonbuilding structure must meet the applicable flood protection grade required by IDNR and FEMA rules.
- (5) Detached residential accessory structures. Detached residential accessory structures larger than four hundred (400) square feet in a floodway fringe district must be provided with a flood protection grade of at least two (2) feet above the base flood elevation. Detached residential accessory structures, the total square footage being equal to or smaller than four hundred (400) square feet may be erected in a floodway fringe district above or below the flood protection grade only if the following conditions are met:
- a. The detached structure is constructed or placed on the same lot as an existing primary residential structure and is operated and maintained under the same ownership;
  - b. The detached structure is customarily incidental, accessory and subordinate to, and commonly associated with, the operation of the primary use of the lot;
  - c. The detached structure is no larger than seventy-five (75) percent of the size of the existing primary residential structure;
  - d. The detached structure shall never be used in total, or in part, for habitable space;
  - e. Any electrical wiring and any heating, cooling or other major appliance in the detached structure is located above the base flood elevation and the detached structure is not used for the storage of any substance or chemical which is dangerous or would become dangerous if mixed with water; and
  - f. As a condition to allowing a detached residential accessory structure, the DMD may require the owner to record a statement, in a form approved by DMD, indicating that the detached residential accessory structure shall not, in the future, be used in total, or in part, as habitable space. This shall be a covenant that shall be recorded in the Office of the Recorder, Marion County, Indiana, with the property deed and shall be binding on all subsequent owners.
- (6) Attached nonhabitable residential accessory enclosures. Attached nonhabitable accessory enclosures may be constructed in a floodway fringe district as a part of one-family, two-family, or multifamily structures only under the following conditions:
- a. All parts of the building or structure other than the attached nonhabitable accessory enclosure shall be erected, constructed, reconstructed, expanded, structurally altered, converted, used or relocated in compliance with this subsection 735-304(b);
  - b. The attached nonhabitable accessory enclosure is attached to or part of the primary residential structure and is operated and maintained under the same ownership;
  - c. The attached nonhabitable accessory enclosure is customarily incidental, accessory and subordinate to, and commonly associated with the use of the primary residential structure;
  - d. The attached nonhabitable accessory enclosure is not used in total or in part as habitable space, but is solely for parking vehicles, building access or storage of materials not covered under standard flood insurance policy;
  - e. As a condition to allowing an attached nonhabitable accessory enclosure, the DMD shall require the owner to record a statement, in a form approved by DMD, indicating that the attached nonhabitable accessory enclosure shall not, in the future, be used in total, or in part, as habitable space. This shall be a covenant that shall be recorded in the Office of the Recorder, Marion County, Indiana, with the deed and shall be binding on all subsequent owners;
  - f. Any electrical wiring and any heating, cooling or other major appliance or equipment in the attached nonhabitable accessory enclosure is located above the base flood elevation and the

attached nonhabitable accessory enclosure is not used for the storage of any substance or chemical which is dangerous or would become dangerous if mixed with water; and

- g. The exterior walls of the attached nonhabitable accessory enclosure shall be constructed with a material which will maintain its structural integrity during and after exposure to floodwaters and be designed to automatically equalize hydrostatic flood forces by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must meet the following minimum criteria:
  - 1. A minimum of two (2) wall openings having a total net area of not less than one (1) square foot for every two (2) square feet of enclosed area subject to flooding shall be provided;
  - 2. The bottoms of all openings shall be no higher than one (1) foot above the flood level of the enclosure or no greater than one (1) foot above grade, whichever is less; and
  - 3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters without reliance on human or electrical activation; and
- h. Attached nonhabitable accessory enclosures that are also legally established nonconforming uses pursuant to subsection 735-304(b)(8) shall not be subject to the requirements of subsection 735-304(b)(6).

(7) Manufactured home dwellings, mobile dwellings and recreational vehicles.

- a. Manufactured home dwellings and mobile dwellings that are placed or undergo substantial improvements or substantial additions on sites outside of a mobile dwelling project, in a new mobile dwelling project or subdivision, in an expansion to an existing mobile dwelling project or subdivision, or in an existing mobile dwelling project or subdivision on which a manufactured home dwelling or mobile dwelling has incurred substantial damage as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home dwelling or mobile dwelling is elevated with a flood protection grade at least two (2) feet above the base flood and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
  - b. Manufactured home dwellings and mobile dwellings that are placed or undergo substantial improvements or substantial additions on sites in an existing mobile dwelling project or subdivision on which a manufactured home dwelling or mobile dwelling has not incurred substantial damage as the result of a flood, shall be elevated so that either the lowest floor of the manufactured home dwelling or mobile dwelling is elevated with a flood protection grade at least two (2) feet above the base flood or the manufactured home dwelling or mobile dwelling chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely anchored to a foundation system to resist flotation, collapse and lateral movement.
  - c. Recreational vehicles placed on sites in the floodway fringe for one hundred eighty (180) consecutive days or more shall be subject to the requirements for manufactured home dwellings and mobile dwellings contained in this article. Recreational vehicles placed on sites in the floodway fringe shall not be subject to requirements for manufactured home dwellings and mobile dwellings contained in this article and shall not require a floodplain development permit if the recreational vehicle is either placed on the site for fewer than one hundred eighty (180) consecutive days or is fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
- (8) Legally established nonconforming uses. Nothing stated in this subsection shall prevent ordinary maintenance or repair of legally established nonconforming uses as defined in this article. The cost of ordinary maintenance and repair of buildings or structures is not counted toward the fifty (50) percent limit for determining a substantial improvement, restoration of substantial damage or substantial addition as defined herein.

Improvements, additions and restoration of damage to legally established nonconforming uses authorized under this subsection shall not be subject to subsection 735-304(b)(6) of this section.

a. Restoration of damage.

1. Nonsubstantial damage: A legally established nonconforming use in a floodway fringe district damaged by flood, fire, explosion, act of God or the public enemy may be restored to its original dimensions and condition provided that the damage is a nonsubstantial damage as defined by this article.
2. Substantial damage: A legally established nonconforming use that is substantially damaged may only be restored if the restored structure is provided with a flood protection grade of at least two (2) feet above the base flood elevation.

b. Improvements.

1. Nonsubstantial improvements: A legally established nonconforming use in a floodway fringe district may undergo a one-time only nonsubstantial improvement. Subsequent improvements shall be subject to the requirements and limitations of this article applicable to substantial improvements.
2. Substantial improvements: A legally established nonconforming use may undergo a substantial addition if the addition is provided with a flood protection grade of at least two (2) feet above the base flood.

c. Additions.

1. Nonsubstantial addition: A legally established nonconforming use in a floodway fringe district may undergo a one-time only nonsubstantial addition provided that a covenant indicating that "a one-time non-substantial addition to the structure has taken place and that any subsequent improvements or additions shall be subject to the requirements and limitations of this article applicable to substantial additions" shall be recorded in the office of the recorder, Marion County, Indiana, with the property deed and shall be binding on all subsequent owners.
2. Substantial addition: A legally established nonconforming use may only undergo a substantial addition if the addition is provided with a flood protection grade of at least two (2) feet above the base flood elevation.

(9) Draining of land; altering of watercourses; construction of ponds, lakes, levee, dams. No draining or reclamation of land; altering, widening, deepening or filling of watercourses or drainage channels or ways; construction of ponds, lakes, levees, or dams; or any other changes or improvements of watercourses or drainage channels or ways shall be undertaken in the floodway fringe district unless first approved by the IDNR, if applicable, and any other local, state or federal agencies having jurisdiction over such activity.

(10) Construction of new access roads. If the proposed activity includes the construction of a new access road between proposed buildings to be located in the floodway fringe district and a public road, and the public road at the intersection with the proposed access road is at or above the base flood elevation, then the proposed access road must also be at or above the base flood elevation along the entire length between any proposed building and the public road. If there is more than one (1) access road between the public road and any proposed building, only one (1) must provide access at or above the base flood elevation.

**Sec. 735-305. Variances.**

(a) The Board of Zoning Appeals may only issue a variance to the permitted uses or development standards of the floodway (FW) or floodway fringe (FF) districts if the applicant submits evidence that:

- (1) There exists a good and sufficient cause for the requested variance;

- (2) The strict application of the terms of this article will constitute an exceptional hardship to the applicant;
  - (3) The grant of the requested variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with other applicable law or ordinances.
- (b) The Board of Zoning Appeals may only issue a variance to the permitted uses of development standards of the floodway (FW) or floodway fringe (FF) districts subject to the following conditions:
- (1) No variance for the construction of a new residential structure in a floodway (FW) district may be granted;
  - (2) Any variance granted for a use in a floodway (FW) district shall first require a permit from IDNR, if such permit is required by IDNR rules and procedures;
  - (3) Variances to the flood protection grade requirements may be granted only when a new structure is to be located on a lot of one-half (1/2) acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection elevation;
  - (4) Variances may be granted for the reconstruction or restoration of any structure listed on the National Register of Historic Places or the Indiana State Survey of Historic, Architectural, Archaeological and Cultural Sites, Structures, Districts and Objects, subject to the condition that such variance will not preclude the structure's continued designation as an historic structure and that the variance is the minimum necessary to preserve the historic character;
  - (5) All variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and
  - (6) DMD shall issue a written notice to the recipient of a variance that the proposed construction will be subject to increased risks of life and property and could require payment of increased flood insurance premiums.

**Sec. 735-306. Permit application and review procedures; record-keeping.**

(a) DMD shall review all applications for a floodplain development permit for all sites which have been identified by DMD as lying in a flood control district. DMD shall verify that the site is in a flood control district by referring to the flood insurance rate map. In cases where the floodplain status of the site cannot be fully determined through the use of these maps, DMD shall use the best available data to determine the floodplain status of the site, in accordance with section 735-300 of this article.

(b) If the permit application is for a site located in an identified floodway (FW) district, then DMD shall direct the applicant to apply to IDNR for a state permit for construction in a floodway. A floodplain development permit shall not be issued for the proposed activity until the IDNR has issued a certificate of approval of construction in a floodway or a letter stating that IDNR approval is not required, and DMD determines that the application complies with all other applicable requirements of this article.

(c) If the permit application is for a site located in a floodway fringe (FF) district, then DMD may approve the application upon compliance with the applicable requirements of this article.

(d) In both floodway (FW) and floodway fringe (FF) districts, DMD will require such modifications to the design and materials of the proposed activity, as DMD may deem appropriate under this article.

(e) In reviewing applications for floodplain development permits for compliance with the requirements of this article, DMD shall assure that all necessary permits related to floodplain management objectives from state, federal, and local agencies have been obtained.

(f) Records of floodplain development permits.

- (1) DMD will maintain a file of all floodplain development permits issued in a flood control district.
- (2) DMD will make these floodplain development permits available to representatives of FEMA, IDNR and other interested parties.

(g) NFIP elevation certificates.

- (1) DMD will file the NFIP elevation certificate, and the floodproofing certificate if applicable, for each building and structure in a flood control district with the floodplain development permit.
- (2) DMD will make available to insurance agents and lenders, upon request, copies of the NFIP elevation certificate and the floodproofing certificate to assist in the actuarial rating of the structure for flood insurance purposes.

(h) The applicant shall notify an adjacent community and IDNR prior to any alteration or relocation of a watercourse in a riverine situation and submit copies of such notification to DMD and FEMA.

**Sec. 735-307. National flood insurance program regulation.**

DMD, during the review of floodplain development permit applications located in identified flood control districts, shall ensure that all national flood insurance program regulations (codified at 44 CFR, Part 60.3) pertaining to state and federal permits, subdivision review, building permit review, floodproofing nonresidential structures, mobile home tie-down standards, utility construction, recordkeeping (including lowest floor elevations), and watercourse alteration and maintenance have been met.

**Sec. 735-308. Severability.**

If any section, subsection, paragraph, subparagraph, clause, phrase, word, provision or portion of this article shall be held to be unconstitutional or invalid by any court of competent jurisdiction, such holding or decision shall not affect or impair the validity of this article as a whole or any part thereof, other than the section, subsection, paragraph, subparagraph, clause, phrase, provision or portion so held to be unconstitutional or invalid.

**Sec. 735-309. Violations.**

(a) Construction or development authorized by the floodplain development permit shall proceed according to the requirements of this article, the development plan and supporting documents filed with said permit application, and the conditions of an applicable variance grant to the requirements of this article. If DMD determines that construction or development is proceeding or has proceeded in violation of this article, the development plan or supporting documents, or variance grant, or that the permit was issued in violation of an ordinance or the conditions of such variance grant, DMD may revoke said permit. Written notice of the revocation shall be provided to the permit applicant.

(b) A violation of this article shall be enforceable under Chapter 730, Article V of this Code.

(c) A violation may lead to the cancellation of a standard flood insurance policy. DMD shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by the standard flood insurance policy to be suspended.

**Sec. 735-309.5. Effective date.**

This article shall be in full force and effect on July 5, 2005 ~~January 5, 2004~~ after its adoption in compliance with I.C. 37-7-4.

**Sec. 735-310. Construction of language and definitions.**

(a) Construction of language. The language of this article shall be interpreted in accordance with the following regulations:

- (1) The particular shall control the general.
  - (2) In the case of any difference of meaning or implication between the text of this article and any illustration or diagram the text shall control.
  - (3) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
  - (4) Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
  - (5) A "building" or "structure" includes any part thereof.
  - (6) The phrase "used for", includes "arranged for", "designed for", "intended for", "maintained for", or "occupied for".
  - (7) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or", or "either/or", the conjunction shall be interpreted as follows:
    - a. "And" indicates that all the connected items, conditions, provisions, or events shall apply.
    - b. "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
    - c. "Either ... or" indicates that all the connected items, conditions, provisions, or events shall apply singly but not in combination.
- (b) Definitions. The words in the text or illustrations of this article shall be interpreted in accordance with the following definitions. The illustrations and diagrams in this section provide graphic representation of the concept of a definition; the illustration or diagram is not to be construed or interpreted as a definition itself.

*As-built condition.* The state of being of a structure or building immediately following its construction or placement.

*Attached nonhabitable accessory enclosure.* An enclosed area of a structure below the elevated first floor used solely for parking vehicles, building access or storage which satisfies all requirements for such a structure as set forth in this article.

*Base flood.* That flood having a peak discharge which can be expected to be equalled or exceeded on the average of once in a hundred-year period, as calculated by a method and procedure which is acceptable to and approved by the IDNR. This flood is equivalent to a flood having a probability of occurrence of one (1) percent in any given year.

*Base flood elevation.* The site-specific elevation of the water surface of the base flood measured in feet above mean sea level (1929 NGVD or NAVD 1988). In either case, a conversion number shall be included.

*Best available data.* Information including but not limited to available topographic mapping, survey data, historic flood records, engineering studies, channel ratings, and engineering judgment, used by DMD to make flood control district determinations pursuant to section 735-300 of this article, when detailed floodplain data are not available for a particular site.

*Building.* Any structure designed or intended for the support, enclosure, shelter or protection of persons, animals, or property of any kind, having an enclosed space and a permanent roof supported by columns or walls.



*Construction activity.* The conduct of land alterations, watercourse alterations, erection, construction, placement, repair, alteration, conversion, maintenance, moving, or remodeling of any new or existing building or structure or any part thereof, or the construction, installation, extension, repair, alteration, conversion, removal or maintenance of building or structure equipment.

*Cost.* The actual value of the work to be performed based on a method approved by FEMA.

*Detached residential accessory structure.* A detached nonhabitable structure which is subordinate to and located no less than six (6) feet from the primary residential structure and which satisfies all local regulations regarding this classification.

*Development.* Any man-made change to improved or unimproved real estate including, but not limited to, buildings and other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

*DMD.* The Department of Metropolitan Development of the City of Indianapolis.

*DPW.* The Department of Public Works of the City of Indianapolis.

*Elevation certificate.* The most recently published official elevation certificate document issued by FEMA.

*Existing mobile dwelling project or subdivision.* A mobile dwelling project or subdivision for which the construction of facilities for servicing the lots on which the mobile dwellings are to be affixed (including, at a minimum, the installation of utilities, construction of streets and either final site grading or pouring of concrete pads) is completed before the effective date of this article May 15, 1984.

*Expansion to an existing mobile dwelling project or subdivision.* The preparation of additional sites for an existing mobile dwelling project or subdivision by the construction of facilities for servicing the lots on which the mobile dwellings are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

*FDP.* Floodplain development permit.

*FEMA.* Federal Emergency Management Agency.

*Fifty (50) percent limit.* The maximum amount of work allowed in or on a legally established nonconforming use before the work is not eligible for the special allowances provided for restoration of nonsubstantial damage, nonsubstantial improvements and nonsubstantial additions as provided herein. The proposed work shown on an application for a floodplain development permit in or on a legally established nonconforming use shall be evaluated to determine whether the fifty (50) percent limit has been exceeded by taking the ratio of the projected cost of the work divided by the market value before the start of construction of the legally established nonconforming use (excluding the value of the land or detached structures) as a percentage.

*Fill.* Soil material placed upon the ground, compacted and graded for the purpose of elevating the surface of the ground.

*Flood or flooding.*

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of rivers, streams, ditches or enclosed drainage systems;
- b. The unusual and rapid accumulation or runoff of surface waters from any source;
- c. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)b of this definition and are akin to a river of liquid and flowing mud on

the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)a. of this definition.

*Flood insurance study base flood profile.* The base flood elevation profile included in the January 5, 2004 July 5, 2005 flood insurance study published by FEMA.

*Floodplain.* The area adjoining the river or stream which has been or may hereafter be covered by floodwaters.

*Floodproofed building.* A nonresidential building designed to exclude floodwaters from the interior of that building. All such floodproofing shall be adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood.

*Floodproofing certificate.* The most recently published official document for floodproofing certificate for nonresidential structures issued by FEMA.

*Flood protection grade.* The elevation of the lowest point in a building at which floodwaters may enter the interior of the building. Such lowest point is defined by the following:

- (1) The lowest floor of the building (if a basement is included, the basement floor is the lowest floor);
- (2) The garage floor, if the garage is the lowest level of the building (except garages which qualify as an allowed nonhabitable attached accessory enclosure);
- (3) The first floor of buildings elevated on pilings or constructed on an above-ground crawl space;
- (4) The floor level of any enclosure below the elevated first floor, including a crawl space that is below the adjoining ground level at all sides unless the enclosure satisfies the requirements for a nonhabitable attached accessory enclosure;
- (5) The level of protection provided to a nonresidential building below which the building is designed to be floodproofed. The design and construction shall be certified on a floodproofing certificate by a professional engineer or a professional architect as being adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood.

*Floodwater.* The water of any lake or watercourse which is above the banks and/or outside the channel and banks of such watercourse.

*Floodway.* The channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the base flood of any river or stream.

*Floodway fringe.* The portion of the regulatory floodplain which is not required to convey the one hundred-year frequency flood peak discharge and therefore lies outside of the floodway.

*Habitable space.* The enclosed area of any building used for living area including but not limited to bedrooms, bathrooms, kitchens, living rooms, family rooms, dining rooms, recreation rooms, utility rooms and workshops.

*Historic structure.* Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the national register;
- (2) Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in accordance with state historic preservation programs which have been approved by the secretary of interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the secretary of the interior; or
  - b. Directly by the secretary of the interior.

*IDNR.* The Indiana Department of Natural Resources.

*INRC.* The Indiana Natural Resources Commission.

*Land alteration.* Any change in the topography of land caused by activities including but not limited to excavation, filling, deposit or stockpiling of materials and construction of ponds, dams, or levees outside of a watercourse. For purposes of this article, land alterations do not include the construction, placement of, or other activities involving buildings or nonbuilding structures, or those activities which are defined as open land use in this article, or ordinary maintenance and repair of an IDNR approved land alteration.

*Legally established nonconforming use.* Any continuous, lawful land use having commenced prior to the time of adoption, revision or amendment of this article, but which fails, by reason of such adoption, revision, amendment or variance, to conform to the present requirements of the flood control zoning district.

*LOMA.* Letter of map amendment issued by FEMA.

*LOMR.* Letter of map revision issued by FEMA.

*Manufactured home dwelling.* A unit which is fabricated in one (1) or more modules at a location other than the home site, by assembly line type production techniques or by other construction methods unique to an off-site manufacturing process. Every module shall bear a label certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards. The unit must have been built after January 1, 1981, have at least nine hundred fifty (950) square feet of main floor area (exclusive of garages, carports, and open porches), and exceed twenty-three (23) feet in width.

*Market value of structure.* The market value of the structure itself, not including the associated land, landscaping or detached accessory structures. The market value must be determined by a method approved by FEMA and DMD. If an appraisal is used, the appraiser must have at least one (1) of the following designations:

- (1) Member of the American Institute of Real Estate Appraisers (MAI);
- (2) Residential member of the American Institute of Real Estate Appraisers (RM);
- (3) Senior real estate analyst of the Society of Real Estate Appraisers (SREA);
- (4) Senior residential appraiser of the Society of Real Estate Appraisers (SREA);

- (5) Senior real property appraiser of the Society of Real Estate Appraisers (SRPA);
- (6) Senior member of the American Society of Appraisers (ASA);
- (7) Accredited rural appraiser of the American Society of Farm Managers and Rural Appraisers (ARA); or
- (8) Accredited appraiser of the Manufactured Housing Appraiser Society.

*Mobile dwelling.* A movable or portable unit fabricated in one (1) or more modules at a location other than the home site, by assembly line type production techniques or by other construction methods unique to an off-site manufacturing process. The unit is designed for occupancy by one (1) family, and erected or located as specified by section 536-831 et seq. of this Code, and which was either:

- (1) Constructed prior to June 15, 1976, and bears a seal attached under Indiana Public Law 135, 1971, certifying that it was built in compliance with the standards established by the Indiana Administrative Building Council; or
- (2) Constructed subsequent to or on June 15, 1976, and bears a seal certifying that it was built in compliance with the Federal Mobile Home Construction and Safety Standards Law.

*Mobile dwelling project or subdivision.* An area of contiguous land separated only by a street(s) upon which three (3) or more mobile dwellings are designated spaces or lots for the purpose of being occupied as primary residences and includes all real and personal property used in the operation of such mobile dwelling project; or an area of contiguous land separated only by a street that is subdivided and contains individual lots which are sold or intended to be sold, leased or similarly contracted for the purpose of being occupied as a primary residence, is a mobile dwelling project if three (3) or more lots or sites are designated specifically to accommodate mobile dwellings.

*New mobile dwelling project or subdivision.* A mobile dwelling project or subdivision for which the construction of facilities for servicing the lots on which the mobile dwellings are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this article.

*NFIP.* National flood insurance program.

*Nonbuilding structure.* Structures other than buildings including but not limited to public utilities, on-site wastewater disposal systems, water supply systems, sanitary sewers, on-site wastewater treatment systems, lift stations, transmission towers, well pumps, electrical units, bridges, culverts, and any other structures determined by DMD to constitute a potential hazard to life, health, safety or property caused by exposure to floodwaters during the base flood.

*Nonsubstantial addition.* A structural enlargement of a structure, the cost of which is less than fifty (50) percent of the market value of the structure before the start of construction.

*Nonsubstantial damage.* Damage of any origin sustained by a structure and not intentionally caused or inflicted by the owner or occupant whereby the cost of restoring the structure to its predamaged condition would be less than fifty (50) percent of the market value of the structure before the damage occurred.

*Nonsubstantial improvement.* Any structural improvement of a structure which does not consist of a structural enlargement or repair of damage, the cost of which is less than fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term does not include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;
- (2) Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure"; or
- (3) Ordinary maintenance and repair as defined herein.

*Open land use.* The production of crops, pasture, forests, parks, and recreational uses which do not involve any structure, obstruction, construction, excavation or deposit in a floodway as defined by IDNR, or any land alteration or watercourse alteration as otherwise defined in this article. The following specific activities are classified as open land use:

- (1) Excavation of cemetery grave;
- (2) Exploratory excavations or soil testing under the direction and control of professional engineers, soil engineers, geologists, civil engineers, architects or land surveyors, which are backfilled;
- (3) Ordinary cultivation of agricultural land including tilling, construction of minor open ditches, and crop irrigation; and
- (4) The planting and tilling of gardens, flower beds, shrubs, trees and other common uses and minor landscaping of land appurtenant to residences.

*Ordinary maintenance and repair.* Construction activity commonly accomplished in or on an existing structure or existing building equipment for the purposes of preventing deterioration or performance deficiencies, maintaining appearance, or securing the original level of performance. Preventing deterioration or deficient performance shall include such activities as caulking windows, painting, pointing brick, oiling machinery and replacing filters. Maintaining appearance shall include such activities as sandblasting masonry and cleaning equipment. Securing the original level of performance shall include such activities as replacing broken glass, patching a roof, disassembling and reassembling a piece of building equipment, welding a broken part and replacing a component of a heating system (but not a furnace) with an identical component. Ordinary maintenance and repair shall not include any construction activity which alters the prior or initial capacity, performance, specifications, type or required energy of functional features of an existing structure or building equipment.

*Primary residential structure.* The residential building in which the permitted primary use of the lot is conducted.

*Professional architect.* An architect registered under IC 25-4-1.

*Professional engineer.* An engineer registered under IC 25-31-1.

*Professional surveyor.* A surveyor registered under IC 31-1-1.

*Recreational vehicle.* A self-propelled or towed vehicle designed and intended specifically for temporary living, travel, and leisure activities, including but not limited to boats, motor homes, travel trailers, and camping trailers.

*Regulatory flood profile.* A longitudinal profile along the thread of a stream showing the maximum water surface elevation attained by the base flood.

*Residential building.* Any building which possesses the architectural features, traits and qualities indicating or constituting those distinguishing attributes of a residence, such as height, bulk, materials, detailing and similar features.

*Shaded zone X.* Areas between limits of the one hundred-year flood and five hundred-year flood; certain areas subject to one hundred-year flooding with average depths less than one (1) foot or with drainage areas generally less than one (1) square mile; and areas protected by levees from the base flood.

*Standard flood insurance policy.* The flood insurance policy issued by the federal insurance Administrator, or an insurer pursuant to an arrangement with the Administrator pursuant to federal statutes and regulations.

*Standard proctor.* The maximum dry density of a backfill material as determined by the methods set forth within ASTM D 698. The percent standard proctor density is a ratio of the in-place dry density of a backfill material, determined by those methods set forth within ASTM D 1556, to the maximum dry density (determined by Test Method 698). The resulting quotient must be multiplied by one hundred (100), and the value obtained must meet or exceed the minimum values specified herein.

*Start of construction.* The date that a floodplain development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date.

*Structure.* Anything that can be constructed, altered, repaired or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, detached garages, gas or liquid storage tanks, cabins, manufactured homes, travel trailers to be placed on a site for more than one hundred eighty (180) consecutive days, and other similar items.

*Substantial addition.* A structural enlargement of the enclosed space of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction.

*Substantial damage.* Damage of any origin sustained by a structure and not intentionally caused or inflicted by the owner or occupant, whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

*Substantial improvement.* Any structural improvement of a structure which does not consist of a structural enlargement or repair of damage, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. The term does not include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;
- (2) Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure"; or
- (3) Ordinary maintenance and repair as defined herein.

*Variance.* A grant of relief from the terms of this article.

*Violation.* The failure of a structure or development or use to be fully compliant with this article. A structure or use or development without the elevation certificate, other certifications, or other evidence of compliance required.

*Watercourse.* Natural streams, man-made ditches, lakes, reservoirs, ponds, retention or detention basins, and drainage swales. A watercourse is distinguished from overland flow, sheet flow,

shallow swale flow, and storm sewer flow by the following characteristics which must be present to constitute a watercourse:

- (1) Defined and distinguishable stream banks under natural conditions; and
- (2) Regularity of flow in the channel evidenced by a distinguishable waterline vegetation limit or hydrologic characteristics.

*Watercourse alteration.* Any encroachment, diversion, relocation, impoundment, draining, damming, repair, construction, reconstruction, dredging, enclosing, widening, deepening, filling or other modification of a watercourse. Watercourse alteration does not include the clearing of dead or dying vegetation, debris or trash from the channel, nor does it include ordinary maintenance or repair of an IDNR approved watercourse alteration.

*Zone A.* Areas within the floodplain established by the flood insurance rate maps where no base flood elevation is provided.

*Zone AE.* Areas within the floodplain established by the flood insurance rate maps where base flood elevations are provided.

*Zone AO.* Areas within the floodplain established by the flood insurance rate maps that are subject to sheet flow, ponding, or shallow flooding and where base flood depths (feet above grade) are provided.

*Zone AH.* Areas within the floodplain established by the flood insurance rate maps that are subject to shallow flooding and where base flood elevations are provided.

SECTION 2. General Ordinance No. 64, 2005 be, and hereby is repealed.

SECTION 3. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.


SECTION 4. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end, the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

The foregoing was passed by the City-County Council this 29th day of August, 2005, at 10:50 p.m.

ATTEST:

  
Jean Ann Milharcic  
Clerk, City-County Council

  
Steve Talley  
President, City-County Council



